IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 467.

GUY T. HELVERING, Commissioner of Internal Revenue,

Petitioner,

v.

SYLVIE R. GRIFFITHS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

RESPONDENT'S SUPPLEMENTAL MEMORANDUM.

ROLAND L. REDMOND,
ALLIN H. PIERCE,
Counsel for the Respondent,
No. 2 Wall Street,
New York, N. Y.

THE COURT PRESS, N. Y. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 467.

GUY T. HELVERING, Commissioner of Internal Revenue,

Petitioner,

v.

SYLVIE R. GRIFFITHS,

Respondent.

RESPONDENT'S SUPPLEMENTAL MEMORANDUM.

Pursuant to permission granted during the argument of this case on December 7, 1942, this memorandum is submitted for the sole purpose of drawing the Court's attention to the apparent inaccuracy of the statement on page 31 of the petitioner's brief, reading as follows:

> "Thus the Treasury estimates that, during the calendar year 1936, over 4½ billion dollars of corporate income will be withheld from stockholders. If this undistributed income were distributed, it would be added to the income of stockholders and there taxed as is other personal income. But, as matters now stand, it will be withheld from stockholders by those in control of these corporations. In one year alone, the Government will be deprived of revenues amounting to over $1,300,000,000."

The Treasury Department has for a number of years published its so-called "Statistics of Income" and these show in detail the receipts and disbursements of all corporations subject to Federal income, excess profits or other taxes. The item called "Compiled net profit less total tax" is the difference between total receipts (including partially and wholly tax exempt receipts) and the aggregate of all statutory deductions and the Federal income tax and, in the years where applicable, excess profits tax and surtax on undistributed profits. "Compiled net profit less total tax" therefore includes the gross sum available for distribution to stockholders.

These statistics also show separately the dividends distributed by the reporting corporations in cash and in stock. For the years 1937 and 1938 the so-called "Cash dividends" have included dividends paid in cash or in assets other than the corporation's own stock; and "Stock dividends" have included all distributions "in the corporation's own stock". This precise language is not used in the statistics for prior years, the dividends being usually expressed in the following terms, "Cash dividends paid" and "Stock dividends paid".

We set forth below the figures for the years 1929 to 1933 inclusive, showing "Compiled net profit less total tax", and the dividends distributed in cash and in stock. In accordance with the practice of the Treasury Department, all statistics are expressed in term of $1000.

	"Compiled net profit less total tax."	"Cash dividends."	"Stock dividends."
1929	$10,676,071	$8,355,661	$1,288,642
1930	3,947,005	8,262,241	414,180
1931	D. 1,175,596	6,151,083	163,530
1932	D. 4,115,377	3,885,601	143,076
1933	D. 1,353,141	3,127,459	102,043

	"Compiled net profit less total tax."	"Cash dividends."	"Stock dividends."
1934	2,379,169	4,889,379	214,763
1935	4,687,959	5,940,620	135,851
1936	6,579,509	7,379,333	344,972
1937	6,554,121	7,514,017	188,670
1938	3,271,420	5,013,433	84,580

D. means deficit.

The source of these statistics for each year is as follows:

1929 "Statistics of Income for 1929," U. S. Treasury Dept., Table 14, Part 1, p. 268.

1930 "Statistics of Income for 1930," U. S. Treasury Dept., Table 14, Part 1, p. 214.

1931 "Statistics of Income for 1931," U. S. Treasury Dept., Table 13, Part 1, p. 130.

1932 "Statistics of Income for 1932," U. S. Treasury Dept., Table 13, Part 1, p. 136.

1933 "Statistics of Income for 1933," U. S. Treasury Dept., Table 13, Part I, p. 142.

1934 "Statistics of Income for 1934, Part 2," U. S. Treasury Dept., Table 2, Part I, p. 48.

1935 "Statistics of Income for 1935, Part 2," U. S. Treasury Dept., Table 3, Part I, p. 40.

1936 "Statistics of Income for 1936, Part 2," U. S. Treasury Dept., Table 3, Part I, p. 70.

1937 "Statistics of Income for 1937, Part 2," U. S. Treasury Dept., Table 3, Part I, p. 58.

1938 "Statistics of Income for 1938, Part 2," U. S. Treasury Dept., Table 3, Part I, p. 76.

Only preliminary reports have been published in respect of the "Statistics of Income for 1939" and subsequent years.

These statistics support entirely the statement made by counsel for the respondent, in the course of oral argument, that the dividends distributed by American corporations, particularly in the depression period, far exceeded their total income. If, in the above years, corporations had been taxed in the same manner as partnerships, as suggested by the petitioner, instead of an increase in income tax payable by individuals, there would have been a vast loss.

Respectfully submitted,

ROLAND L. REDMOND,
ALLIN H. PIERCE,
Counsel for the Respondent.
No. 2 Wall Street,
New York, N. Y.